No. 15-674

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

STATE OF TEXAS, *et al.*,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF OF THE MAJOR CITIES CHIEFS ASSOCIATION, POLICE EXECUTIVE RESEARCH FORUM, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES, AND INDIVIDUAL SHERIFFS AND POLICE CHIEFS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

Amici are leading national associations of local law enforcement officials and individual police chiefs, sheriffs, and other law enforcement officials from dozens of cities in 23 states.[1] *Amici* have deep and wide-ranging expertise in local law enforcement and in cooperative federal-state law enforcement activities. They are also intimately familiar with the challenges of performing critical law enforcement functions in communities where immigrants fear the police and are vulnerable to exploitation and crime.

Amici believe in secure borders. *Amicus* Major Cities Chiefs Association, for example, has announced its support for federal efforts to secure the border and prevent illegal entry into the United States, and advocates for increased resources for the appropriate enforcement agencies.[2]

At the same time, *amici*'s experience in keeping their communities safe has taught the value of bringing law-abiding immigrants out of the shadows. Effective community policing is essential to public

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. Pursuant to this Court's Rule 37.3(a), letters from all parties consenting to the filing of this brief have been submitted to the Clerk.

[2] Major Cities Chiefs Ass'n, *Immigration Position* (Oct. 2011), *available at* https://majorcitieschiefs.com/pdf/news/immigration_position112811.pdf.

safety, and the trust and cooperation necessary for sound police work is undermined by undocumented immigrants' fears of interacting with law enforcement. This dynamic, moreover, leaves undocumented immigrants more vulnerable to crime and exploitation, leading to more violence in the communities *amici* are charged with protecting. *Amici* have therefore concluded that the Government's policy of granting deferred action to parents of U.S. citizens and lawful permanent residents (the "Deferred Action Policy") will help law enforcement officers keep their communities safe.

Amici are:

- The Major Cities Chiefs Association, a professional association of chiefs and sheriffs representing the largest cities in the United States, serving more than 68 million people;
- The Police Executive Research Forum, a national membership organization of police executives from the largest city, county, and state law enforcement agencies, dedicated to improving policing and advancing professionalism through research and involvement in public policy debate;
- The National Organization of Black Law Enforcement Executives (NOBLE), serving as the conscience of law enforcement by being committed to Justice by Action, with nearly 60 chapters and representing over 3,000 members worldwide, including chief executive officers and command-level law enforcement officials from federal, state,

county, and municipal law enforcement agencies, and other criminal justice practitioners; and

- Individual police chiefs and sheriffs:[3]
    - Chief Art Acevedo, Austin, Texas, Police Department;
    - Chief Charlie Beck, Los Angeles, California, Police Department;
    - Chief David Bejarano, Chula Vista, California, Police Department;
    - Chief Richard Biehl, Dayton, Ohio, Police Department;
    - Chief Chris Burbank (Ret.), Salt Lake City, Utah, Police Department;
    - Sheriff Jerry L. Clayton, Washtenaw County, Michigan, Sheriff's Office;
    - Sheriff Mark C. Curran, Jr., Lake County, Illinois, Sheriff's Office;
    - Chief Sergio Diaz, Riverside, California, Police Department;
    - Deputy Chief Tim Doubt, Salt Lake City, Utah, Police Department;
    - Deputy Chief Krista Dunn (Ret.), Salt Lake City, Utah, Police Department;
    - Chief Jerry Dyer, Fresno, California, Police Department;

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[3] Affiliations are provided for identification purposes only.

- Sheriff Tony Estrada, Santa Cruz County, Arizona, Sheriff's Office;
- Commissioner William B. Evans, Boston, Massachusetts, Police Department;
- Sheriff Paul H. Fitzgerald, Story County, Iowa, Sheriff's Office;
- Special Agent in Charge Timothy Fuhrman (Ret.), Mobile, Alabama, FBI;
- Assistant Chief Randall Gaber, Madison, Wisconsin, Police Department;
- Sheriff Marlin Gusman, Orleans Parish, Louisiana, Sheriff's Office;
- Chief Ronald Haddad, Dearborn, Michigan, Police Department;
- Sheriff Michael A. Haley (Ret.), Washoe County, Nevada, Sheriff's Office;
- Chief James Hawkins (Ret.), Garden City, Kansas, Police Department;
- Chief Dwight Henninger, Vail, Colorado, Police Department;
- Chief Kim Jacobs, Columbus, Ohio, Police Department;
- Chief A.M. Jacocks, Jr. (Ret.), Virginia Beach, Virginia, Police Department;
- Chief Michael Koval, Madison, Wisconsin, Police Department;
- Sheriff Leon Lott, Richland County, South Carolina, Sheriff's Department;

- Chief Chris Magnus, Tucson, Arizona, Police Department;
- Chief Tom Manger, Montgomery County, Maryland, Police Department;
- Sheriff Bill McCarthy, Polk County, Iowa, Sheriff's Office;
- Sheriff Jim McDonnell, Los Angeles County, California, Sheriff's Department;
- Chief William McManus, San Antonio, Texas, Police Department;
- Chief John Mina, Orlando, Florida, Police Department;
- Chief Roy W. Minter, Jr., Peoria, Arizona, Police Department;
- Sheriff Chris Nanos, Pima County, Arizona, Sheriff's Department;
- Lt. Andy Norris, Tuscaloosa County, Alabama, Sheriff's Office;
- Chief Kathleen O'Toole, Seattle, Washington, Police Department;
- Sheriff Joe Pelle, Boulder County, Colorado, Sheriff's Office;
- Public Safety Director Mark Prosser, Storm Lake, Iowa, Public Safety Department;
- Commissioner Charles H. Ramsey (Ret.), Philadelphia, Pennsylvania, Police Department;
- Sheriff Will Reichardt, Skagit County, Washington, Sheriff's Office;

- Chief Cel Rivera, Lorain, Ohio, Police Department;
- Chief A.C. Roper, Birmingham, Alabama, Police Department;
- Commissioner Richard Ross, Jr., Philadelphia, Pennsylvania, Police Department;
- Chief Lee W. Russo, West Valley City, Utah, Police Department;
- Chief Greg Suhr, San Francisco, California, Police Department;
- Chief J. Scott Thompson, Camden, New Jersey, Police Department;
- Chief Michael Tupper, Marshalltown, Iowa, Police Department;
- Chief George Turner, Atlanta, Georgia, Police Department;
- Sheriff John Urquhart, King County, Washington, Sheriff's Office;
- Sheriff Lupe Valdez, Dallas County, Texas, Sheriff's Department;
- Chief Roberto Villaseñor (Ret.), Tucson, Arizona, Police Department;
- Chief Robert C. White, Denver, Colorado, Police Department; and
- Sheriff Richard D. Wiles, El Paso County, Texas, Sheriff's Office.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is not about whether any alien will be removed or will remain in the country. Indeed, the States challenging the Deferred Action Policy acknowledge that the Executive Branch has unreviewable discretion to set priorities in immigration enforcement, including the authority to forbear from removing individual aliens. *See* Resp. Br. in Opp. 2; *see also Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012) ("broad discretion" a "principal feature of the removal system"). The question is the terms on which those permitted to remain will live in our communities.

The basic logic underlying the Deferred Action Policy, and other uses of deferred action authority over the years, is that the ability to live and work in the open is inextricably linked with any relief from removal. Respondents, by contrast, maintain that while the Executive may allow any alien to remain in the United States, it can do nothing to enable that alien to come forward and receive employment authorization under longstanding regulations. *See* 8 C.F.R. § 274a.12(c)(14).

The lessons *amici* have learned in protecting their communities shed important light on this disagreement. As a practical matter, it is untenable to say that an individual will not be removed from the United States, but may not publicly identify herself, may not obtain identification documents, and may not lawfully support herself. When individuals reside in a community without documentation and in constant fear of deportation, there is a fundamental

breakdown in trust that impedes the police from doing their jobs. This same dynamic leaves undocumented individuals vulnerable to crime and exploitation, ultimately making communities less safe for everyone.

The Deferred Action Policy helps address this practical reality. It will advance public safety by encouraging cooperation and trust-building between immigrant communities and police, and mitigate the serious vulnerabilities to crime these communities face.

It is ultimately not the responsibility of local law enforcement to decide who will remain in the country. But it is their responsibility to ensure that everyone in their communities is safe from harm. That job is made dramatically more difficult if those whose presence is temporarily countenanced are nonetheless prevented from living and working openly. The injunction entered by the district court leaves local law enforcement – and everyone they protect – in the impossible position of grappling with these consequences.

1. Community policing, a philosophy that calls for trust and engagement between law enforcement and the people they protect, is vital to effective police-work. That trust is undermined when undocumented individuals fear interaction with the police, and law enforcement suffers as a result. Extensive evidence shows that undocumented immigrants – and their lawfully present family and neighbors – fear that turning to the police will bring adverse immigration consequences. As a result, immigrant communities are less willing to report crime or cooperate with police investigations. This fundamental

breakdown in trust poses a major challenge not just for police to investigate individual crimes, but also to properly allocate resources in the interest of public safety.

The Deferred Action Policy ameliorates these problems by addressing an important reason why many individuals fear cooperating with law enforcement. As the experience of previous programs involving similar immigration relief bears out, when immigrants are permitted to step out of the shadows, they are much more willing to work cooperatively with police.

The Deferred Action Policy further aids law enforcement by facilitating access to identification, such as federal employment authorization documents. Lack of identification in immigrant communities often leads to undue burdens on police, potentially turning a simple traffic stop into an hours-long detour to fingerprint someone at the police station. When police are able to readily identify victims, witnesses, and potential suspects, valuable law enforcement resources are spared.

2. The Deferred Action Policy also benefits public safety by helping law enforcement protect a population that is uniquely vulnerable to exploitation and violent crime. Numerous studies show that undocumented individuals' fear of interactions with law enforcement makes them attractive targets for many forms of crime and abuse. Undocumented immigrants, for instance, face increased wage theft and other forms of exploitation in the workplace. With limited access to bank accounts (in substantial part because of their lack of identification), they have been dubbed "walking ATMs" and are frequently

targeted for robbery. Undocumented individuals are also especially vulnerable to domestic abuse because they are afraid to turn to law enforcement to stop abusive partners.

By eliminating an important reason for fear of law enforcement and building trust between police and immigrants with longstanding ties to the United States, the Deferred Action Policy will aid community policing and make deferred action recipients less vulnerable to crime and exploitation. In doing so, the Deferred Action Policy provides vital support to police charged with protecting everyone in their communities.

ARGUMENT

I. The Deferred Action Policy Fosters Effective Law Enforcement.

A. "Community Policing" Is Essential To Effective Law Enforcement.

The experience of policing cities across the country has taught law enforcement officers that "[t]o do our job, we must have the trust and respect of the communities we serve."[4] In order to stop

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[4] *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the Judiciary* 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n), *available at* http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf.

"child predators, drug dealers, rapists or robbers," police officers "need the full cooperation of victims and witnesses."[5]

This common-sense philosophy has come to be called "community policing." A component of the Department of Justice, which has promoted "Community Oriented Policing Services" for more than two decades, describes the approach as "begin[ning] with a commitment to building trust and mutual respect between police and communities."[6] It is "critical to public safety," because "[w]hen police and communities collaborate, they more effectively address underlying issues, change negative behavioral patterns, and allocate resources."[7] When that relationship of trust is missing – as it is when people believe that contacting police could lead to deportation for themselves or others – community policing breaks down and the entire community is harmed.

B. The Deferred Action Policy Promotes Cooperation With Law Enforcement.

1. The reality of millions of undocumented immigrants living in the United States poses significant challenges to effective community policing.

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[5] *Id.*

[6] U.S. Dep't of Justice, Office of Cmty. Oriented Policing Servs., *About*, http://www.cops.usdoj.gov/about (last visited Mar. 6, 2016).

[7] *Id.*

According to a Pew survey, 57% percent of Latinos in the United States indicate that they worry about deportation – of themselves, family members, or close friends – and 40% worry about it "a lot."[8] This fear necessarily affects cooperation and communication with the police. Immigrants who lack documentation – and their family members and neighbors who may be U.S. citizens or lawfully present – often assume that any interaction with police could have adverse consequences for themselves or a loved one. Even when local authorities play no role in immigration enforcement, many immigrants still associate police with immigration authorities, or expect police to inquire about immigration status.[9]

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[8] Mark Hugo Lopez & Susan Minushkin, Pew Hispanic Center, *2008 National Survey of Latinos: Hispanics See Their Situation in U.S. Deteriorating; Oppose Key Immigration Enforcement Measures* ii (Sept. 18, 2008), *available at* http://pewhispanic.org/reports/report.php?ReportID=93.

[9] *See, e.g.*, U.S. Dep't of Justice, Office of Cmty. Oriented Policing Servs., *Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders* 16 (Apr. 2010) ("It is often unclear to immigrants how their documentation status may affect law enforcement's response to crime."), *available at* http://ric-zai-inc.com/Publications/cops-w0747-pub.pdf; Police Executive Research Forum, *Voices from Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement* 2 (2012) ("[S]ome members of the public . . . may have a misperception that because immigration is governed by laws, all law enforcement agencies have responsibility for enforcing those laws. . . . Police chiefs note that immigrants often have this misperception, which often makes them reluctant to contact local police . . . ."), *available at* http://www.policeforum.org/assets/docs/Free_Online_Document
(continued...)

As a result, immigrant communities in general and undocumented immigrants in particular are less likely to trust and cooperate with local police. One study of Latinos in four major cities found that:

- 70% of undocumented immigrants and 44% of all Latinos are less likely to contact law enforcement authorities if they were victims of a crime for fear that the police will ask them or people they know about their immigration status; and

- 67% of undocumented immigrants and 45% of all Latinos are less likely to voluntarily offer information about, or report, crimes because of the same fear.[10]

This study (among others) highlights that fears of immigration enforcement and the resulting damage to law enforcement cooperation affects not just the undocumented community but also individuals with citizenship or lawful status, in particular in "mixed-

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s/Immigration/voices%20from%20across%20the%20country%20%20local%20law%20enforcement%20officials%20discuss%20the%20challenges%20of%20immigration%20enforcement%202012.pdf.

[10] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), *available at* https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF; *see also id.* at 1 ("Survey results indicate that the greater involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.").

status" households.[11] And the more afraid an immigrant is of removal, the less likely she is to turn to the police.[12]

These statistics have a human face. One woman who came to the United States from Guatemala, when asked in an interview whether she could count on the police to protect her, "simply smiled."[13] She recounted an episode working the night-shift at a fast-food restaurant that was robbed at gunpoint.[14] The immigrant managed to knock out an assailant with a broomstick and take his gun, but "[a]t that moment, while I was holding the men, I kept on thinking, what do I do? If I call the police, I'd get de-

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[11] An estimated 85% of immigrants live in mixed-status families. *See* Anita Khashu, Police Found., *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* 24 (Apr. 2009), *available at* http://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf.

[12] Jill Theresa Messing et al., *Latinas' Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334 (2015) ("The results indicate that for each 1-point increase in fear of deportation [e.g., from 'not much' to 'some' worry, or from 'some' to 'a lot'], Latina participants were 15% less willing to report being victim of a violent crime to police.").

[13] Cecilia Menjívar & Cynthia Bejarano, *Latino Immigrants' Perceptions of Crime and Police Authorities in the United States: A Case Study from the Phoenix Metropolitan Area*, 27 Ethnic & Racial Stud. 120, 134 (Jan. 2004).

[14] *Id.* at 134-35.

ported. Yes, I was nervous (with the gun), but I was even more nervous to have to talk to the police."[15]

This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds of the law enforcement officers polled held the view that recent immigrants reported crimes less frequently than others.[16] Those surveyed also indicated that the crimes that are underreported by immigrants most often are serious ones, with domestic violence and gang violence at the top of the list.[17]

2. The widely-recognized fear among immigrants of interacting with law enforcement poses a fundamental challenge for community policing. Police cannot prevent or solve crimes if victims or witnesses are unwilling to talk to them because of concerns that they will be deported, or that their loved ones or neighbors will face adverse consequences. As the president of *amicus* Major Cities Chiefs Association recently explained to Congress, "[c]ooperation is not forthcoming from persons who see their police as immigration agents."[18]

The underreporting of crimes by recent immigrants is a problem for the criminal justice system.[19]

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[15] *Id.* at 135.

[16] Robert C. Davis et al., *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 Crim. Just. Pol'y Rev. 183, 187 (Sept. 2001).

[17] *Id.* at 188.

[18] Statement of Tom Manger, *supra* note 4, at 2.

[19] Davis et al., *supra* note 16, at 188.

The most immediate consequence, of course, is that serious crimes go unreported and unpunished. But the problem is even more systemic. Undercounting the incidence of crime in areas where immigrant communities live leads to the under-allocation of law enforcement resources to those communities.[20] As one official explained, when criminal behavior goes unreported "[c]rime multiplies" and "[u]nresolved resentments grow in the community."[21] Another added that the under-reporting of crime "keeps fear at very high levels and diminishes quality of life."[22]

3. The Deferred Action Policy will ameliorate these problems and improve public safety more broadly. Recipients of deferred action (and their loved ones) would no longer have the same reason to fear ordinary encounters with law enforcement. Instead, they would have greater freedom to cooperate in the protection of their community without worrying how their good deed might be punished – for example, by causing them to be separated from their citizen or permanent resident children.

This is not mere speculation – it has already happened under the Deferred Action for Childhood Arrivals ("DACA") policy, under which immigrants who arrived in the United States as children are eligible for deferred action. Nearly eight in ten recipients of DACA relief reported that they are now less

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[20] *Id.*

[21] *Id.*

[22] *Id.*

afraid of deportation,[23] and two-thirds reported being less afraid of law enforcement.[24]

In addition, in the Violence Against Women Act of 2000,[25] Congress created the U visa to provide immigration relief to undocumented victims of certain crimes.[26] Like DACA and the Deferred Action Policy at issue here, a U visa allows recipients to identify themselves, receive temporary relief from removal, and obtain verified government identification.[27] The consequences for law enforcement have been striking.

A recent study indicated that U visa applicants and recipients, freed of the need to remain in the shadows, became far more likely to cooperate

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[23] Zenén Jaimes Pérez, *A Portrait of Deferred Action for Childhood Arrivals Recipients: Challenges and Opportunities Three-Years Later* 23 (June 2015), *available at* http://unitedwedream.org/wp-content/uploads/2015/10/DACA-report-final-1.pdf.

[24] Roberto G. Gonzales & Angie M. Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA* 9 (June 2014), *available at* http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca.

[25] Pub. L. No. 106-386, 114 Stat. 1491 (2000).

[26] *See* U.S. Dep't of Homeland Sec., U.S. Citizenship & Immigration Servs., *Victims of Criminal Activity: U Nonimmigrant Status*, https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status (last updated Feb. 11, 2016).

[27] *See id.*

with law enforcement in the detection, investigation, and prosecution of crimes.[28] Indeed, more than 99% stated that they were willing to cooperate with the police, and 70% were in fact asked to – and did – provide assistance related to crimes committed against them.[29] Another study revealed that three-quarters of law enforcement officers view U visas as beneficial in encouraging victims to come forward and report crimes.[30]

The Deferred Action Policy should have the same pro-cooperative effect – on a broader scale, given the larger number of qualified individuals. As a result, local law enforcement officers can expect a greater degree of cooperation from immigrant communities, with all of the benefit to public safety that entails.

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[28] *See* Leslye Orloff et al., *U-Visa Victims & Lawful Permanent Residency* 5-6 (Sept. 6, 2012), *available at* http://www.ncdsv.org/images/NIWAP_U-VisaVictimsAndLawfulPermanentResidency_9-6-12.pdf.

[29] *Id.* The fact that U-visa applicants are expected to provide "reasonably requested information and assistance" to law enforcement in connection with the crimes that qualify them for immigration relief may help explain these especially high numbers for cooperation. *See id.* at 5 (internal quotation marks omitted). But a similar result (if not necessarily to quite the same degree) is likely with respect to deferred action recipients, particularly given the evidence from the DACA program, which involves no expectation of law enforcement cooperation.

[30] Natalia Lee et al., *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access* 21 (Apr. 16, 2013), *available at* http://www.niwap.org/reports/Police-Response-U-Visas-Language-Access-Report-4.6.13.pdf.

C. The Deferred Action Policy Aids Law Enforcement By Facilitating Access To Identification.

A further benefit of the Deferred Action Policy for effective policing follows from the greater availability of identification. Because most states do not issue driver's licenses or other identification to undocumented immigrants, law enforcement often face serious difficulty securely identifying undocumented community members. Ready access to identification aids law enforcement in the most basic of ways: if the police cannot verify who someone is, it becomes much harder to identify witnesses and victims, investigate potential suspects, and perform critical tasks like searching a criminal history, investigating outstanding warrants, and deciding whether someone poses a threat.[31]

Even the simplest traffic stop can lead to an unnecessary waste of valuable law enforcement resources if an individual cannot be identified. If an officer stops a motorist who does not have a license or other verifiable identification, the officer may have no other option than to arrest the individual, bring him to the station, and obtain fingerprint information in order to identify the individual. As one police chief has explained, "[w]hen we stop cars and the driver doesn't have a driver's license, there are very few options for the officers and troopers."[32] The only

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[31] Police Executive Research Forum, *supra* note 9, at 15.

[32] *See id.* at 15-16.

way to reliably identify the individual may be through fingerprints, requiring a detour to "jail so we can find out who they are."[33] Another former police chief lamented the "manpower" required and time lost – "up to two to three hours to determine who an arrestee is" – which could be devoted to more pressing law enforcement concerns.[34]

The Deferred Action Policy will significantly increase access to identification. Under longstanding regulations, individuals granted deferred action are eligible to apply for a federal employment authorization document ("EAD"). The EAD comes in the form of a card issued by U.S. Citizenship and Immigration Services, and includes the recipient's photograph.[35] Individuals who receive employment authorization also are eligible to obtain a Social Security number and card.[36] Finally, Congress has authorized states participating in the REAL ID Act of 2005 to issue driver's licenses to immigrants with

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[33] *Id.* at 16.

[34] *Id.* at 15.

[35] *See* 8 U.S.C. § 1324a(h)(3); 8 C.F.R. § 274a.12(c)(14); *see also* U.S. Dep't of Homeland Sec., U.S. Citizenship & Immigration Servs., OMB No. 1615-0040, Instructions for I-765 Application for Employment Authorization (Nov. 2015) (describing EAD as a "card" and requiring two passport-style photos), *available at* https://www.uscis.gov/sites/default/files/files/form/i-765instr.pdf.

[36] *See* Soc. Sec. Admin., SSA Publ'n No. 05-10096, Social Security Numbers For Noncitizens (June. 2015), *available at* http://www.ssa.gov/pubs/EN-05-10096.pdf.

"approved deferred action status," although no state is required to do so.[37]

Because the Deferred Action Policy expands availability of identification, it will assist law enforcement officers' ability to identify the people they encounter.[38] Instead of time-consuming, wasteful, and potentially antagonistic encounters with individuals who pose no public safety concern, police would have more time to focus on higher priorities in keeping their communities safe.

II. The Deferred Action Policy Helps Law Enforcement Protect Vulnerable Individuals From Crime And Exploitation.

1. The Deferred Action Policy has another vital public safety benefit: protecting individuals who are attractive targets for criminals.

As discussed above, undocumented immigrants as well as their families fear interactions with police and are reluctant to report crimes. No one knows this better than the predators who seek to take advantage of their vulnerabilities. These individuals face a range of misconduct, from abuse by unscrupulous employers to domestic and gang vio-

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[37] *See* 49 U.S.C. § 30301 note.

[38] There is substantial evidence that participants in the Deferred Action Policy will take advantage of the availability of identification. More than 90% of recipients of relief under the similar DACA program report that they have acquired a driver's license or other identification. Pérez, *supra* note 23, at 20.

lence.[39] "When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike."[40]

This phenomenon has been termed the "deportation threat dynamic."[41] The logic is straightforward: "(1) an unauthorized migrant seeks, and finds, employment; (2) a person, such as an employer or criminal, identifies the migrant as unauthorized; (3) that person commits a crime against the migrant, such as wage theft, another workplace violation, or robbery; and (4) the migrant does not report the crime to law enforcement," fearing immigration consequences.[42]

2. This phenomenon is widespread in the workplace. In a number of studies, between 40% and 80% of mostly undocumented immigrants reported being victims of wage theft.[43] Many immigrants also

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[39] *See* U.S. Dep't of Justice, Office of Cmty. Oriented Policing Servs., *supra* note 9, at 16.

[40] Statement of Tom Manger, *supra* note 4, at 2.

[41] Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593 (2011).

[42] *Id.* at 610.

[43] *See id.* (finding that two of five respondents reported wage theft since arriving in New Orleans, and citing Nik Theodore et al., *La Esquina (The Corner): Day Laborers on the Margins of New York's Formal Economy*, 9 WorkingUSA: J. Labor & Soc. 407 (Dec. 2006), finding a wage theft rate of approximately 50% in New York); Southern Poverty Law Ctr., *Under Siege: Life for* (continued...)

reported other types of worksite abuse.[44] In one study, 32% of respondents said they had suffered on-the-job injuries – and most of these individuals were either fired, not paid lost wages, or denied medical care by their employers.[45]

The deportation threat dynamic fuels not just exploitation but outright violence. An advocate reported that, when one worker attempted to collect wages his employer owed him, "[t]he contractor raised his shirt and showed he had a gun — and that was enough. . . . He didn't have to say any more. The worker left."[46]

3. This same lawlessness plaguing undocumented communities extends well beyond the workplace. Nearly two-thirds of undocumented migrant workers participating in a Memphis study reported being the victim of at least one crime, with the most common being theft and robbery.[47] Respondents indicated that fewer than a quarter of

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Low-Income Latinos in the South 6 (Apr. 2009) (finding that 41% of those surveyed across the South had experienced wage theft, and 80% had in New Orleans), *available at* http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf.

[44] Fussell, *supra* note 41, at 604.

[45] Southern Poverty Law Ctr., *supra* note 43, at 6.

[46] *Id.* at 7 (internal quotation marks omitted).

[47] Jacob Bucher et al., *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 Sw. J. Crim. Just. 159, 164, 166 (2010).

these crimes were reported to the police, and *only one* was reported by the victim himself.[48]

As this study suggests, robbery and similar crimes are a particular problem. Undocumented individuals typically do not have bank accounts, in part because of their inability to obtain government-issued identification.[49] Moreover, many of these immigrants live in group apartments and are unable to store valuables in a safe place at home.[50] As a result, undocumented immigrants are known to carry large amounts of cash, making robbing them an especially lucrative proposition. The risk to the perpetrators, meanwhile, is minimal because the victims are too afraid to report the crime to the police.

The targeting of undocumented immigrants for robbery has become so widespread that these individuals have been labeled "walking ATMs" – or the subjects of "amigo shopping."[51] In a study of largely undocumented immigrants helping to rebuild New Orleans in the wake of Hurricane Katrina, the immigrants reported robbery and physical assault at more than *ten times* the rate experienced by the general

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[48] *Id.* at 165.

[49] Fussell, *supra* note 41, at 604; Southern Poverty Law Ctr., *supra* note 43, at 6, 25.

[50] Khashu, *supra* note 11, at 25; *see also* Bucher et al., *supra* note 47, at 164, 167-68 (finding that a large majority of surveyed undocumented migrants workers lived with at least three others and finding a strong relationship between number of cohabitants and crime).

[51] *See* Fussell, *supra* note 41, at 604-05; Southern Poverty Law Ctr., *supra* note 43, at 25; Khashu, *supra* note 11, at 25.

population.[52] In another survey, 53% of law enforcement officers held the view that undocumented immigrants were especially likely to be victims of robbery and theft.[53]

4. There is also evidence that undocumented immigrants are especially vulnerable to domestic violence. A number of studies have shown that abusive partners may utilize the threat of deportation in order to maintain power and control.[54] When the abusing partner has lawful status, financial dependence on a partner with stable immigration status may similarly facilitate violence.[55]

Seventy percent of participants in one study of domestic abuse victims said that immigration status was a major reason keeping them from seeking help or reporting their abuse to the authorities – and thereby permitting the violence to continue.[56] In another study, the single largest factor independently

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[52] *See* Fussell, *supra* note 41, at 604.

[53] *Id.*

[54] *See, e.g.*, Messing, *supra* note 12, at 330 (citing several studies); Angelica S. Reina et al., *"He Said They'd Deport Me": Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants*, 29 J. Interpersonal Violence 593, 601 (2013). The latter study cited a participant who explained that a partner "beat me up and I could have called the police because that was what I thought to do . . . but he threatened me . . . he told me that if I called the police I was going to lose out . . . because they [police officers] . . . would . . . take me, because I didn't have legal documents." Reina et al. at 601.

[55] *See, e.g.*, Messing, *supra* note 12, at 330.

[56] Reina et al., *supra* note 54, at 600.

affecting the rate at which battered immigrant Latina women called the police was identified as immigration status.[57]

5. Undocumented individuals may even be targeted for violent crime simply *because they are undocumented.* In one especially egregious episode in Patchogue, New York, Marcelo Lucero, an Ecuadorian immigrant, was attacked – and killed – by a gang of teenagers looking for suspected undocumented immigrants to harass as part of a "sport" they called "beaner-hopping."[58] The attackers testified that they were "confident their victims would not call police" because of "questions about their immigration status."[59]

The unique vulnerability of undocumented individuals to crime is summed up well by a tragic incident in Nashville. A woman posing as an immigration official tried to force her way into an undocumented woman's home, and, in the struggle, stabbed the victim 12 times, and then kidnapped her baby.[60] Despite this extraordinary assault, the

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[57] Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 Int'l J. Police Sci. & Mgmt. 230, 237 (2005).

[58] Southern Poverty Law Ctr., *supra* note 43, at 25.

[59] Ediberto Román, *Those Damned Immigrants: America's Hysteria Over Undocumented Immigration* 36 (2013).

[60] Amy Braunschweiger, Human Rights Watch, *Nashville Immigrants Too Scared to Call the Police* (May 19, 2014), *available at* https://www.hrw.org/news/2014/05/19/nashville-immigrants-too-scared-call-police.

woman resisted her neighbors' cries to call 9-1-1.[61] She explained that she was too "concerned about my legal status."[62] "Even when I was in the ambulance, bleeding, the thing I kept thinking was '[w]ho will take care of my children when I am deported?'"[63]

In short, undocumented individuals' fear of contact with law enforcement, together with their lack of work authorization or other identification, emboldens exploitative employers and criminals alike, and diminishes the safety of entire communities. By permitting individuals who will not be removed by immigration authorities to live and work openly, the Deferred Action Policy eliminates a significant barrier to an open and trusting relationship with law enforcement. As a result, the police will be better able to fight crime and serve everyone they are charged with protecting.

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[61] *Id.*

[62] *Id.*

[63] *Id.*

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Petitioner's brief, the decision of the court of appeals should be reversed.

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